HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE R. SUBHASH REDDY

Writ Appeal No. 2441 of 2005

Between:

M/s. Kondapally Transport,

Represented by its Director K. Satyanarayana Rao

and others.

… Petitioners.

And

The Central Registrar/Arbitrar,

A.P. Mahesh Cooperative Urban Bank Limited,

Hyderabad and another.

… Respondents.

:: ORDER::

Counsel for the petitioner : Sri P.R. Prasad

Counsel for the respondents : Sri Murali Narayan Bung

December 22, 2005

Per G.S. Singhvi, CJ.

This is an appeal for setting aside the order dated 16.9.2005 passed by the learned Single Judge in Writ Petition No. 14687 of 2004 whereby he declined to entertain the appellants' prayer for quashing Award dated 28.4.2004 passed by respondent No.1 but gave liberty to them to approach the Civil Court.

Appellant No.1 is engaged in transport business. The remaining appellants are its Directors. Appellant No.1 took a loan of Rs.50,00,000/- from A.P. Mahesh Cooperative Urban Bank Limited, Hyderabad but failed to repay the same in accordance with the conditions of grant. There upon, respondent No.2 filed an application under Section 84 of the Multi-State Co-operative Societies Act, 2002, for recovery of the loan. After considering the pleadings of the parties and evidence produced by them, respondent No.1 vide his Award dated 28.4.2004 directed the appellants to pay a sum of Rs.27,63,448/- as on 28.2.2004 with future interest with effect from 1.3.2004, in accordance with the terms of the agreement.

The appellants challenged the award passed by respondent No.1 mainly on the ground that the interest awarded by him was wholly arbitrary and excessive.

The learned Single Judge declined to entertain the appellants' prayer for nullification of the award on the ground that an effective alternative remedy is available to the appellants under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the 1996 Act').

We have heard the learned counsel for the parties and perused the record. Since an effective alternative remedy is available to the appellants for questioning the correctness and legality of the award passed by respondent No.1, we do not find any valid ground to make a departure from the settled law that in exercise of power under Article 226 of the Constitution of India the High Court will not

entertain a petition if an effective alternative remedy is available to the petitioner.

Learned counsel for the appellants reiterated the argument made before the learned Single Judge that the interest awarded by respondent No.1 is excessive and therefore the writ petition should be entertained, but we have not felt impressed. In our opinion, the appellants can raise this issue in the proceedings which may be initiated under Section 34 of the 1996 Act.

For the reasons mentioned above, we hold that the order of the learned Single Judge does not suffer from any error apparent warranting interference by the Division Bench and the appeal is liable to be dismissed. Ordered accordingly.

At this stage, learned counsel for the appellants made a request that his clients may be allowed 15 days' time for the purpose of availing the alternative remedy. In this regard, it is sufficient to observe that the appellants may file appropriate application or petition under Section 34 of the 1996 Act within a period of 15 days from today and apply for condonation of delay, if any. If such application is filed, the concerned Court will decide the same on merits by taking into consideration the fact that the appellants had earlier, on the basis of legal advise given to them, invoked the jurisdiction of the High Court under Article 226 of the Constitution of India and then filed appeal under Clause 15 of the Letters Patent.

G.S. SINGHVI, CJ.

R. SUBHASH REDDY, J.

December 22, 2005.

MVB.